

REMARKS

Applicants note that the Examiner has approved corrected drawings. The Examiner has further withdrawn the objection to claim 35 under 37 CFR §1.75(c) pursuant to Applicants' amendment.

Applicants note that the Examiner has withdrawn the rejection of claims 5, 7, and 8-10 under 35 U.S.C. §112, second paragraph. The Examiner has further withdrawn the rejection of claims 5, 7, and 8-10 under 35 U.S.C. §112, first paragraph. The Examiner has further withdrawn rejection of claims 1-12, 16, 18-21, 35, 46-59, and 64-65 under 35 U.S.C. §102(b) or, in the alternative, under 35 U.S.C. §103(a).

The specification has been amended. Support for the amendment to the specification is found throughout the original disclosure. For example, support for the amendment can be found on page 149, l. 35-37, page 175, l. 20-22, and page 201, l. 6-8. No new matter has been added by this amendment.

Double Patenting

Claims 1-12, 16, 18-21, 35, 46-59, and 64-65 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 96-103, 131, 151-153 of copending Application No. 09/444,067 and claims 20, 31, and 56 of copending Application No. 09/444,221. The Examiner noted Applicants' deferral to address the merits of the rejection until the claims in one of the subject cases are patented.

Patentability Under 35 U.S.C. §§102 and 103

Claims 1-12, 16, 18-21, 35, 46-59, and 64-65 are rejected under 35 U.S.C. §103(a) as being unpatentable over Murphy et al. in view of Collins et al. The Examiner noted Applicants' amendment of the specification and has maintained the rejection. The Examiner noted Applicants' amendment to claim priority to the later filed application serial number 09/847,173, which claims priority to U.S. Patent Application No. 08/720,132, which in turn claims priority to U.S. Provisional Application No. 60/007,083, filed September 27, 1995. The Examiner stated that Applicants cannot overcome the present rejection by claiming priority to an application that has a later filing date than that of the present application.

Applicants have amended the specification to claim priority benefit of U.S. Patent Application No. 08/720,132, filed September 27, 1996, issued on July 24, 2001 as U.S. Patent No. 6,264,957, which is entitled to priority from U.S. Provisional Application No. 60/007,083, filed September 27, 1995. With the present amendment, Applicant is properly claiming priority to an application that has an earlier filing date than that of the present application.

Without further addressing the stated grounds for rejection, it is noted that the rejection is clearly obviated by the amendment herein correcting the priority claim of the application. The present application has now been related back through the entire foundational lineage of the issued '957 patent, as discussed above. The Collins et al. article, published in December, 1995, postdates the earliest application filing date (U.S. Provisional Application No. 60/007,083, filed September 27, 1995) in this lineage. To the extent that Collins et al. teaches aspects of the instant invention, i.e., the ability to make "infectious human RSV from cloned cDNA", and a teaching that "such an approach makes it possible to introduce defined changes into infectious RSV", those aspects are fully disclosed in the above-identified earlier-filed priority application.

For the foregoing reasons, withdrawal of the rejection of claims 1-12, 16, 18-21, 35, 46-59, and 64-65 standing rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Murphy et al. in view of Collins et al., is earnestly solicited.

New Oath or Declaration

The Examiner advises Applicants that if the present application were amended to claim priority as a continuation-in-part of U.S. Patent Application No. 08/720,132, a new oath or declaration in compliance with 37 CFR §1.67(a) identifying this application by application number and filing date would be required.

With this amendment, Applicants file a new oath or declaration in compliance with 37 CFR §1.67(a).

Amendment to Specification

The Examiner stated that the amendment filed September 21, 2001 is objected to under 35 U.S.C. §132 because it introduces new matter into the disclosure. With this amendment, Applicants have replaced the amendment to the specification filed September 21, 2001 with the present amendment to the specification. The present

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amendment to the specification does not introduce new matter into the disclosure. The incorporation by reference of U.S. patent application number 09/847,173 has been cancelled by amendment. The incorporation by reference of U.S. patent application numbers 08/720,132 and 60/007,083 is supported by the original disclosure. Support for the amendment to the specification is found throughout the original disclosure. For example, support for the amendment can be found on page 149, l. 35-37, page 175, l. 20-22, and page 201, l. 6-8. No new matter has been added by this amendment.

CONCLUSION

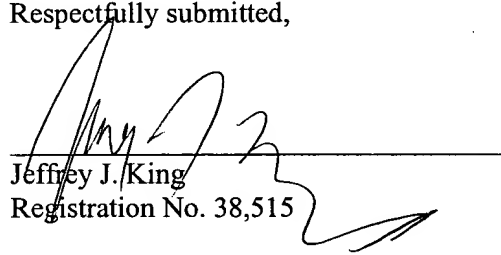
In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 206-332-1380.

Attached hereto is a marked-up version of the changes made to the specification by the current amendment. The attached page is captioned "Version with markings to show changes made."

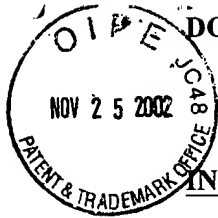
Date: November 19, 2002

Respectfully submitted,



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VERSION WITH MARKINGS TO SHOW CHANGES MADEIN THE SPECIFICATION:

Paragraph beginning at line 7 of page 1 has been amended as follows:

The present application claims the priority benefit of, and is a continuation-in-part of U.S. Patent Application No. 08/892,403, filed July 15, 1997, issued on November 30, 1999 as U.S. Patent No. 5,993,824, which is entitled to priority from U.S. Provisional Application No. 60/047,634, filed May 23, 1997, U.S. Provisional Application No. 60/046,141, filed May 9, 1997, and U.S. Provisional Application No. 60/021,773, filed July 15, 1996, each of which is incorporated herein by reference. The present application also claims the priority benefit of ~~U.S. Patent Application No. 09/847,173, filed May 01, 2001, which is a divisional application of U.S. Patent Application No. 08/720,132, filed September 27, 1996, issued on July 24, 2001 as U.S. Patent No. 6,264,957, which is entitled to priority from U.S. Provisional Application No. 60/007,083, filed September 27, 1995, each of which is incorporated herein by reference.~~